

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

CALIFORNIA OFFSET PRINTERS, INC.

and

Cases 31-CA-27673
31-CA-27679

GRAPHIC COMMUNICATIONS UNION,
LOCAL 404 M, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Katherine Mankin, Atty.

Counsel for the General Counsel, Los Angeles, California.

Andrew B. Kaplan, Atty., Silver & Freedman,

Counsel for Respondent, Los Angeles, California.

Jeffrey Boxer, Atty., for the Charging Party,

Levy, Stern & Ford, Los Angeles, California.

DECISION

I. Statement of the Case

LANA H. PARKE, Administrative Law Judge. This matter was tried in Los Angeles, California on May 8, 2006 upon a Consolidated Complaint and Notice of Hearing (the Complaint) issued March 29, 2006¹ by the Regional Director of Region 31 of the National Labor Relations Board (the Board) based upon charges filed by Graphic Communications Union, Local 404 M, International Brotherhood of Teamsters (the Union or the Charging Party). The Complaint alleges that California Offset Printers, Inc. (Respondent) violated Sections 8(a)(5) and (1) of the National Labor Relations Act (the Act). Respondent essentially denied all allegations of unlawful conduct.

II. Issues

1. Whether Respondent violated Sections 8(a)(5) and (1) of the Act on and following December 22, January 12, and January 18 by failing and refusing to furnish the Union with the following requested information: reinstatement agreements or any documents that employees Linda Ponds and Rebecca Chavira had been asked to sign or submit as a prerequisite to their reinstatement to employment with Respondent.
2. Whether Respondent violated Sections 8(a)(5) and (1) of the Act on January 7 by unilaterally imposing as a condition of employment the requirements that employees be reachable and responsive 24 hours a day, seven days a week, and that they have the necessary telecommunications equipment to be reachable.

¹ Dates occurring in October, November, and December herein are in 2005; Dates occurring in January are in 2006.

III. Jurisdiction

At all relevant times, Respondent, a California corporation, with its principal place of business, offices, and a facility in Glendale, California (the facility) has been engaged in the business of commercial printing. During the past calendar year, a representative 12-month period, Respondent derived gross revenues from its business in excess of \$1,000,000 and purchased and received at the facility goods, supplies, and materials valued in excess of \$50,000 directly from enterprises located outside the State of California. Respondent admits, and I find, it has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union is a labor organization within the meaning of Section 2(5) of the Act.²

III. Findings of Facts

A. Respondent and the Union's Collective Bargaining Relationship

The Union has been the exclusive collective bargaining representative of Respondent's employees in its mailing, shipping, and offset operations (the Unit) since at least 1990.³ Respondent and the Union have been parties to successive collective bargaining agreements, the penultimate of which expired by its own terms on June 30, 2001 and was extended by mutual agreement of the parties until February 13, 2003. Respondent and the Union are currently parties to a collective bargaining agreement effective by its terms from July 1, 2003, through June 30, 2008 (the Current Agreement).

B. The Union's Requests for Information

On October 10, Respondent discharged Linda Ponds (Ms. Ponds) and Rebecca Chavira (Ms. Chavira), both of whom had been employed in the Unit. On October 19, the Union filed grievances for Ms. Ponds and Ms. Chavira, respectively, alleging "wrongful termination" and seeking a make-whole remedy.⁴ By separate letters dated October 25, Respondent denied each of the grievances.

Sometime in late November, William Rittwage, Respondent's CEO, told Lisa Quintanilla (Ms. Quintanilla), his assistant and Human Resources manager, that Ms. Ponds and Ms. Chavira had contacted him and requested reinstatement. Thereafter, Respondent asked its attorney to prepare reinstatement agreements for the two employees (respectively, the Ponds Release and the Chavira Release, described later in pertinent part). Respondent then scheduled separate meetings with the employees for November 30. Ms. Ponds and

² Where not otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony. The bulk of the evidence herein was presented pursuant to the parties' Partial Stipulation of Facts. Douglas Brown, vice president of the Union, gave brief testimony for the General Counsel. Lisa Quintanilla, assistant to Respondent's CEO/Human Resources manager gave brief testimony for Respondent.

³ Specific equipment operations and work functions within the Union's representation purview are set forth at "Section I—Recognition" in the current collective bargaining agreement between the Union and Respondent. The employees thereof constitute a unit appropriate for purposes of collective bargaining within the meaning of §9(b) of the Act.

⁴ Ms. Ponds and Ms. Chavira each signed her respective grievance.

Ms. Chavira asked Douglas Brown (Mr. Brown), the Union's Vice President, to be involved in the meetings.⁵ On November 30, Mr. Brown met separately at the facility with Ms. Ponds and Ms. Chavira in preparation for their meetings with management. The meetings did not, however, take place. According to Mr. Brown, prior to each of the meetings, Ms. Quintanilla informed Mr. Brown and the respective employee that the instant meeting was cancelled because of Mr. Brown's uninvited presence. According to Ms. Quintanilla, because of unrelated issues including an upcoming AQMD inspection, she informed Mr. Brown that Respondent could not meet that day. As there is no complaint allegation regarding the cancellation of Respondent's November 30 meetings with Ms. Ponds and Ms. Chavira, I find it unnecessary to determine which of the two witnesses' accounts is more credible. I do find, however, that Mr. Brown's uncontradicted testimony establishes that both Ms. Ponds and Ms. Chavira asked him to be present at the meetings.

Thereafter, the following sequence of events occurred in resolution of the discharges:

December 6: Ms. Ponds signed the following declaration in the presence of Ms. Quintanilla:

I Linda Ponds call Lisa for a meeting for 12-6-05 to get my job back.
I can start 12-7-05 to same position my same seniority, C.P. Add
this letter to my file. Receive pension cont. [sic]. I am not asking for
back paid.

December 9: Respondent and Ms. Ponds, sans union presence or representation, entered into an agreement whereby Respondent agreed to reinstate Ms. Chavira. Respondent and Ms. Ponds executed a written "RELEASE/RETURN TO WORK AGREEMENT." In pertinent part, the agreement stated that Ms. Ponds directly contacted Respondent and negotiated the agreement. The agreement also provided that its terms were to be kept "strictly confidential," excepting disclosure to family members, accountants, and attorneys, who were to be informed they could not disclose the terms to anyone else and that its terms would not be admissible in any proceeding including arbitration (the Ponds Release).

December 15: Ms. Chavira signed the following declaration in the presence of Ms. Quintanilla:

I Rebecca Chavira would like my job back with my seniority and pay
and pension cont. I am not asking for back pay for time off of work.
I called [Respondent] on my own asking for my job back.

Respondent and Ms. Chavira, sans union presence or representation, entered into an agreement whereby Respondent reinstated Ms. Chavira. Respondent and Ms. Chavira executed a written "RELEASE/RETURN TO WORK AGREEMENT," (the Chavira Release), containing the same terms as the Ponds Release.

⁵ Neither Ms. Ponds nor Ms. Chavira testified. Mr. Brown testified that both employees told him that Connie Morton, payroll/HR Support employee, called them to broker a reinstatement agreement, but he also testified that as of November 30, he did not know who initiated the contacts. All evidence as to who contacted whom about reinstatement is based on hearsay, and I have no way of determining its reliability. Accordingly, I make no finding as to whether Ms. Ponds and Ms. Chavira initially contacted Respondent about reinstatement or vice versa.

According to Ms. Quintanilla, at the time Ms. Ponds and Ms. Chavira executed the releases, "both ladies [said they] did not want the union involved."⁶ Following their respective executions of the Ponds and Chavira Releases, Respondent reinstated Ms. Ponds and Ms. Chavira to their former jobs. Thereafter, neither Ms. Ponds nor Ms. Chavira was willing to give the Union information about their reinstatements. By email dated December 22 and by letters dated January 12 and 18, respectively, the Union requested that Respondent furnish the Union with the following information: reinstatement agreements or any documents Ms. Ponds and Ms. Chavira had been asked to sign or to submit as a requirement to return to work. Since December 22, Respondent has refused to comply with the Union's requests.

C. Alleged Unilateral Imposition of Conditions of Employment

The Current Agreement contains the following description of the rights reserved to management at "Section 3-Management Rights," in pertinent part:

3.1 It is understood that the management of the Employer's business and the direction of its working force, including but not necessarily limited to the right to...maintain discipline and efficiency of all employees, the right to establish and enforce shop rules not in conflict with the specific terms of the Agreement, to establish work schedules and to make changes therein essential to the efficient operation of the Company, are the normal rights of the Company.

The Current Agreement also refers to calling unscheduled employees into work (herein referred to as call-backs) at "Section 5-Temporary Workforce." Pertinent provisions read as follows:

5.1...Prior to hiring or using temporary employees the Employer shall attempt to telephonically contact employees covered by this Agreement to determine if they are available to work...a message shall be left if the call is unanswered. The employee must return the call not more than four(4) hours after the message is left... If the employee is called...less than twelve (12) hours before he is required to report to work, no message need be left. The first employee who accepts an assignment shall be given the work...

The Current Agreement contains further provisions relating to hours of employment and scheduling at "Section 11-Hours." Pertinent provisions read as follows:

11.2 The Employer shall make reasonable efforts to schedule employees for consecutive shifts. However, subject to factors beyond its control, including but not limited to customer demands, vendor delays, equipment malfunctions, and employee absences, the Employer may require employees to work non-consecutive shifts. Employer scheduling shall not be subject to the grievance and arbitration provisions of this Agreement.

11.4 through 11.6 [provide various categories of payment for employees who are "called and put to work"]

⁶ There is no evidence as to what discussion occurred between management personnel and the employees when the releases were signed and no evidence of the context in which the employees declined union involvement.

11.8 Any employee who is "called back [to work]" sooner than twenty (20) hours from the actual starting time of the previous shift worked, shall be paid the overtime rate until such time as such twenty (20) hours has elapsed.

5 11.11 ...[Shift] schedules will be posted outside of the manager's office. The Employer may make changes in the posted schedules on account of factors beyond its control, including but not limited to customer demands, vendor delays, equipment malfunctions, and employee absences. The Employer need not
10 repost a changed schedule... Even if an employee's name is not on the posted schedule, the employee is deemed available and may be called in to work unless the employee has previously made a request for the day off and the Employer has approved the request...

15 On January 7, without prior discussion with any representative of the Union, Respondent posted a memorandum at the Facility from production manager, Frank Leanos, and directed to "All Bindery and Mailing Employees" regarding "Scheduled Times." The memorandum reads:

20 [A]s a contingent of your continued employment, you are required to be reachable on your time off for schedule changes beyond our control. You either need a message machine on your phone, a beeper, or a cell phone. Unless you have a "Request for Time Off" sheet approved, you are required to respond to our phone call.

25 I will be diligent in enforcing these policies. Standard disciplinary action will be taken against anyone not complying with them.

IV. Discussion

A. The Union's Requests for Information

30 No party disputes the existence of a "general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). This obligation extends to
35 information involving labor-management relations during the term of an existing collective-bargaining agreement and to information in furtherance of, or which would allow the union to decide whether to process, a grievance. *Id.* at 436; *Bickerstaff Clay Products*, 266 NLRB 983 (1983). The relevance standard is a liberal, "discovery-type standard." *NLRB v. Acme Industrial Co.*, *supra* at 437; *Southern California Gas Company*, 346 NLRB No. 45 (2006); *Quality Building Contractors*, 342 NLRB No. 38, slip op. 3 (2004). Accordingly, information that
40 is "potentially relevant and will be of use to the union in fulfilling its responsibilities as the employees' exclusive bargaining representative" must be produced. *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1104-1105 (1991). The requested information need not be dispositive of the issue for which it is sought but need only have some bearing on it. *Id.* at 1105. "An employer must furnish information that is of even probable or potential relevance to the
45 union's duties." *Conrock Co.*, 263 NLRB 1293, 1294 (1982). Information pertaining to employees within the bargaining unit is presumptively relevant. *Postal Service*, 332 NLRB 635 (2000). Mandatory subjects of bargaining are also presumptively relevant to a union's representational duties. *Southern California Gas Company*, 346 NLRB No. 45, slip op. 1 (2006). The Board has stated that termination of employment and reinstatement of employees are both
50 mandatory subjects of bargaining. *Parker Transport, Inc.*, 332 NLRB 547, 551 (2000), citing *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 209-210 (1964) and *Ryder Distribution Resources*, 302 NLRB 76, 90 (1991).

In its post-hearing brief, Respondent asserts that the Union is entitled only to information needed for collective bargaining or for processing existing grievances and investigating potential ones.⁷ The information sought herein, Respondent argues, is not for use at the bargaining table, as the Current Agreement has two years to run, and is not relevant to the processing of a grievance inasmuch as Respondent's reinstatements of Ms. Ponds and Ms. Chavira settled their grievances leaving "nothing left to process." It is the Union, however, not Respondent who must assess the satisfactory adjustment of its grievances, and under the above-enunciated legal principles, the Union is presumptively entitled to inquire into discipline imposed and its resolution, as both pertain to bargaining unit employees and are mandatory subjects of bargaining. Respondent's refusal to furnish the Union with the content of Ms. Ponds and Ms. Chavira's reinstatement documents prevents the Union from doing just that and underscores the Union's need of the information.

Respondent also asserts that it declined to comply with the Union's request for information because Ms. Ponds and Ms. Chavira "expressly" told Ms. Quintanilla that they did not want the Union involved in their reinstatement; essentially, Respondent raises a confidentiality defense. Under Board law, a party may refuse to furnish confidential information to the other party in a collective-bargaining relationship if it shows a legitimate and substantial confidentiality interest in the information sought and if, upon balancing the union's need for the information against any legitimate confidentiality interest, the balance tips in favor of the party asserting confidentiality. The party asserting the confidentiality defense has the burden of proof, as well as a duty to seek an accommodation that "would allow the requester to obtain the information it needs while protecting the party's interest in confidentiality." *Northern Indiana Public Service Company*, 347 NLRB No. 17, slip op. 2 (2006), citing *Borgess Medical Center*, 342 NLRB No. 109, slip op. 2 (2004); *River Oak Center for Children, Inc.*, 345 NLRB No. 113 (2005).

Respondent apparently bases its confidentiality defense on Ms. Ponds and Ms. Chavira's declination of union involvement in their reinstatement meetings. As noted earlier, however, the evidence fails to show the motivation or scope of the employees' pronouncements or even whether they or someone else proposed union exclusion. Ms. Ponds and Ms. Chavira's statements that "they did not want the union involved" cannot, therefore, provide Respondent with a legitimate and substantial confidentiality basis for refusing to provide the information. Respondent may also base its defense on the declination language in the Ponds and Chavira Releases that provided the terms were to be kept "strictly confidential." In balancing the Union's need for the information against the legitimacy of such a confidentiality interest, I note that the confidentiality restriction was propounded by Respondent. There is no evidence that Ms. Ponds or Ms. Chavira sought confidentiality, that they had any interest in confidentiality, or that Respondent discussed confidentiality with them. Rather, the evidence shows the releases were prepared by Respondent's attorney prior to the meetings between management personnel and the two employees without, apparently, any prior discussion of confidentiality. Moreover, considering the two employees' lack of sophistication as reflected by

⁷ While Respondent's assertion is technically accurate, it suggests a narrow conception of a union's right to information, which neither the Board nor the courts endorse. See *Pan American Grain Co., Inc.*, 346 NLRB No. 21 (2005) and *NLRB v. Acme Industrial Co.*, supra, at 435-436 ("There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties... Similarly, the duty to bargain unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.")

their handwritten declarations, it is unlikely they had any input into the confidentiality language of the releases, and there is no evidence Ms. Ponds or Ms. Chavira expressed any confidentiality concerns. Indeed, their previous filing of grievances—never withdrawn—and their requests to Mr. Brown that he be involved in their reinstatement discussions with management, militates against any such conclusion. Even assuming the employees sought confidentiality, Respondent has failed to show any legitimate need or purpose for it; there is, for example, no indication that the employees feared retaliation of any kind (such as that evidenced in *Northern Indiana Public Service Company*, supra).⁸ It appears that the confidentiality restrictions redound solely to the benefit of the company, which has an obvious, practical interest in preventing the reinstatements from achieving precedential status or being used in future arbitration proceedings.⁹ However, Respondent's interest does not attain collective-bargaining legitimacy merely because it serves a sound managerial purpose. I find that Respondent did not have a legitimate and substantial confidentiality interest in the information sought. Even assuming Respondent had such an interest, application of the Board-required balancing test does not favor Respondent. By Respondent's refusal to provide the requested reinstatement documents, it has clearly stymied the Union in its representational duty to process Ms. Ponds and Ms. Chavira's grievances, its duty to scrutinize disciplinary procedures, and its duty to vindicate employee rights and equities. Finally, Respondent has made no effort to seek an accommodation that would allow the Union to obtain the information it needs while protecting Respondent's interest in confidentiality. In these circumstances, I conclude that Respondent violated Section 8(a)(5) of the Act by refusing to provide the Union with the information requested regarding the reinstatement of Ms. Ponds and Ms. Chavira.

D. Alleged Unilateral Imposition of Conditions of Employment

Respondent does not dispute its duty to bargain with the Union over mandatory subjects, which include wages, hours, and other terms and conditions of employment. See *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 679-682 (1981). Nor does Respondent disagree that where the duty to bargain exists, an employer violates Section 8(a)(5) and (1) of the Act by implementing material and substantial changes in mandatory subjects without bargaining with the union in the absence of a bargaining impasse. See *McClatchy Newspapers, Inc.*, 339 NLRB 1214 (2003) and cases cited therein.

In applying the above principles to this case, it should initially be determined whether any genuine changes in terms and conditions of employment have occurred. A tightening, fine tuning, or explication of an already existing term does not necessarily constitute a change, material or otherwise. See *Bath Iron Works Corp.*, 302 NLRB 898 at 901 (1991) wherein the Board cited with approval the finding of *Trading Port*, 224 NLRB 980 (1976) that where the standards [of productivity/efficiency] and sanctions remained the same, the related "tightening of

⁸ There is also no evidence that the information sought was of a type identified by the Board in *Northern Indiana Public Service*, supra at slip op. 2-3: "that which would reveal...highly personal information, such as individual medical records or psychological test results; that which would reveal substantial proprietary information, such as trade secrets; that which could reasonably be expected to lead to harassment or retaliation, such as the identity of witnesses; and that which is traditionally privileged, such as memoranda prepared for pending lawsuits...; the names and unlisted phone numbers of customers whose complaints led to an employee's discharge;...an investigative report concerning an altercation between two employees...[or data] created under an express promise of confidentiality."

⁹ In fact the Ponds and Chavira Releases specifically prohibit the terms of the reinstatements being admissible in any proceeding including arbitration.

the application of existing disciplinary sanctions did not require bargaining with the union.” Respondent has not, however, argued that it did not change the terms and conditions of its scheduling procedure by its January 7 directive that unit employees make themselves accessible for call-back work under penalty of discipline, and I will assume for purposes of this analysis that Respondent did change work terms and did so without offering to bargain with the Union. The General Counsel establishes a prima facie violation of Section 8(a)(5) by showing that Respondent made a material and substantial change in a term of employment without negotiating with the union. The burden is then on Respondent to show that the unilateral change was in some way privileged. *Id.*

The changes at issue herein concern employees’ obligation to report to work when called back for otherwise unscheduled hours with disciplinary consequences attendant on noncompliance. As the changes relate to hours of employment and potential discipline, they are clearly mandatory subjects of bargaining. The changes are also material and substantial, requiring employees to be readily accessible for call-back work and to equip themselves with such electronic devices (telephonic message machine, beeper, or cell phone) as will ensure their response, or face disciplinary penalties. Accordingly, the January 7 directive constituted changes in employment terms and conditions relating to hours of work and discipline, and the changes were material and substantial. See *Flambeau Airmold Corporation*, 334 NLRB 165, 166 (2001) (threat of discipline sufficient to show significance of a new rule). Consequently, The General Counsel has established a prima facie violation of Section 8(a)(5), and Respondent must show that the unilateral changes were in some way privileged.

Respondent argues that the management rights provision of the Current Agreement privileges its January 7 directive. The Current Agreement reserves to Respondent the right to manage its business and direct its work force, to maintain discipline and efficiency, to establish and enforce shop rules not in conflict with the specific terms of the Agreement, and to establish work schedules and make changes therein essential to operating efficiency. Further, the Current Agreement gives Respondent significant latitude in scheduling work hours, authorizes Respondent to alter work schedules as operational needs dictate, and states that employees are subject to being “called in to work” unless previous time off requests have been approved. While nothing in the Current Agreement specifies that employees must be reachable and responsive to schedule-change notifications, it is reasonable to infer that the parties anticipated employees would generally be accessible when called back to work.¹⁰ Applying either the Board’s “clear and unmistakable” waiver standard¹¹ or a “contract coverage” analysis¹², I find that the management rights clause of the Current Agreement privileged Respondent’s directive, at least to the extent that employees be required to be reachable on their time off for schedule changes beyond Respondent’s control.

The conclusion that Respondent was privileged to require its unit employees to be reachable on their time off for schedule changes does not end the matter, however. Nothing in the Current Agreement addresses any employee obligation to possess an electronic device (e.g. a telephonic message machine, a beeper, or a cell phone) to ensure accessibility, and

¹⁰ Sections 11.4 through 11.6 of the Current Agreement, for example, specify how employees “called and put to work” shall be paid, and 11.8 provides for overtime pay for any employee “called back” sooner than twenty hours from the starting time of the previous shift.

¹¹ See *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

¹² See *NLRB v. Postal Service*, 8 F.3d 832 (D.C. Cir. 1993) and *The Brooklyn Hospital Center*, 344 NLRB No. 48 at FN2 (2005).

nothing addresses whether discipline may follow inaccessibility or nonresponse to call-backs. The question remains, therefore, whether those portions of the January 7 directive constituted unlawful, unilateral changes.¹³

5 Notwithstanding the Current Agreement's silence on how employees are to make themselves accessible for call-back work or the disciplinary consequences of noncompliance, the Current Agreement spells out Respondent's general authority. By reserving to Respondent "the right to maintain discipline and efficiency of all employees, the right to establish and enforce shop rules not in conflict with the specific terms of [the] Agreement, to establish work schedules and to make changes therein," the parties to the Current Agreement clearly and unmistakably contemplated that Respondent would have comprehensive discretion in those areas. It follows that Respondent's requirement that employees arrange some means of consistently receiving call-backs under threat of discipline is not an unwarranted extension of its contractually mandated discretion. See *Metropolitan Edison Co. v. NLRB*, supra (application of the Board's "clear and unmistakable" waiver analysis); *Enloe Medical Center*, 343 NLRB No. 61 (2004) enf. denied *Enloe Medical Center v. N.L.R.B.*, 433 F.3d 834 (C.A.D.C. 2005).

20 The General Counsel argues that Respondent's January 7 directive unlawfully imposes "a work schedule that restricts bargaining unit employees' autonomy during scheduled time off." However, long before Respondent issued its directive, the Current Agreement authorized Respondent to call employees back to work as needed. The call-back procedure itself was not a change in employment terms and conditions at all, and the fact that the call-back system may sometimes work a hardship on some employees is irrelevant. The question is not whether Respondent is authorized to have a call-back system but whether Respondent may devise rules for and regulate its call-back system without first bargaining with the Union. As explicated above, I have resolved that question in Respondent's favor.

30 The General Counsel also argues that even if the Current Agreement initially established Respondent's right to make the rules enunciated in its January 7 directive, the right lapsed due to nonenforcement during the two and one half years since implementation of the Current Agreement, citing *Vanguard Fire & Supply Co., Inc.*, 345 NLRB No. 77, slip op. 3 (2005), as authority for that proposition. Vanguard, however, is inapposite to the instant issues, as it involves unilateral changes effected in the absence of a bargaining agreement. The General Counsel cites no authority for the proposition that a contractual term may lapse through disuse during the life of the contract. Moreover, no evidence was adduced as to frequency or circumstance of call-backs that would permit any finding as to whether Respondent had or had not regularly deployed its call-back procedure. Accordingly, having found that Respondent was privileged by the language of the Current Agreement to issue its January 7 directive, I shall dismiss this allegation of the Complaint.

45 ¹³ Respondent argues that Section 5.1 of the Current Agreement, at least implicitly, requires employees to have answer machines in order to receive Respondent's calls to return to work. Section 5.1, however, merely describes the work opportunity procedure Respondent must follow before obtaining nonunit employees to meet temporary work demands and neither establishes a requirement that employees possess electronic message devices to receive call-backs nor contemplates disciplinary consequences for nonresponse.

Conclusions of Law

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent's mailing, shipping, and offset operations employees, as specifically described by equipment operation and work function set forth at "Section I—Recognition" in the current collective bargaining agreement between the Union and Respondent, constitute an appropriate unit for collective-bargaining purposes within the meaning of Section 9(b) of the Act.
4. The Union at all relevant times has been and is the exclusive bargaining representative of the employees in said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the following relevant information: reinstatement agreements and/or any documents Ms. Ponds and Ms. Chavira were asked to sign or to submit as a requirement of returning to work.
6. Respondent's unlawful conduct described in paragraph 5 above affects commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

Respondent, California Offset Printers, Inc., Glendale, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Refusing to provide the Union with requested information relevant and necessary to its responsibilities as exclusive collective bargaining representative of a unit of Respondent's mailing, shipping, and offset operations employees, i.e., reinstatement agreements or any documents Ms. Ponds and Ms. Chavira were asked to sign or to submit as a requirement of returning to work.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

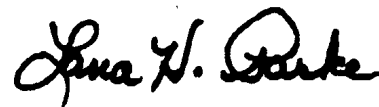
¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Within 14 days from the date of this order, provide the Union with the information the Union requested on December 22, 2005 and January 12 and 18, 2006, which is necessary and relevant to its status as the exclusive collective bargaining representative of the mailing, shipping, and offset operations employees.
- (b) Within 14 days after service by the Region, post at its facility in Glendale, California copies of the attached Notice marked "Appendix."¹⁵ Copies of the Notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by Respondent at any time since December 22, 2005.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: Washington, DC June 23, 2006



Lana H. Parke
Administrative Law Judge

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly,
WE WILL NOT refuse to provide your union, Graphic Communications Union, Local 404 M, International Brotherhood of Teamsters, with requested information it needs to represent and to bargain for you, including reinstatement agreements or any documents employees have been asked to sign or to submit as a requirement of returning to work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide your union with the requested information it needs to represent and to bargain for you.

CALIFORNIA OFFSET PRINTERS, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824

(310) 235-7352, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE COMPLIANCE OFFICER, (310) 235-7123.